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Supreme Court, U.S.
FILED

(1) 071422 MAY 1 8 2008

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No. _____

IN THE

Supreme Court of the United States

MICHAEL ANTHONY HURLEY
JO ANNA PICCIONE HURLEY

Petitioners

Versus

UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, of the US Department of Homeland Security;
BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, Of the US Department of Homeland Security

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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Proceeding Pro Se

QUESTIONS PRESENTED FOR REVIEW

1) Whether the 5th Circuit erred in concluding that they were without jurisdiction due to the untimeliness of Michael Hurley's Petition for Review or due to his having been removed under section 212(a)(2) of the Act, because, 8 U.S.C. 1252(f)(2) provides that a court may "enjoin the removal of an alien pursuant to a final order under this section," (if) "the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law," which Michael Hurley has done in his brief to the court. (See questions 3-7) (See also INA 242 (d)(2)...wherein no court decided the validity of the order of removal) and Constitutional Amendment 14.

2) Whether the 5th Circuit erred in concluding that they were without jurisdiction due to the untimeliness of Michael Hurley's Petition for Review or due to his having been removed

under section 212(a)(2) of the Act, because the Constitutionality of the Immigration and Nationality Act of 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), and 8 U.S.C. 1252 are in question when viewed in light of Article 1, Sections 9 & 10 of the Constitution of the United States, which provides that no law be passed that impairs the Obligation of Contracts, nor shall a Bill of Attainder or ex post facto law be passed, and Amendments 1,4, 5, 9 and 14 prevent unlawful seizure and provide for the exercise of *due process* and *equal protection* – all of the civil rights belonging to Jo Anna Piccione Hurley, a citizen of the United States, which ought to have protected the liberties of Michael and Jo Anna Hurley and the Obligations of their Contract of marriage through the exercise of Due Process. Herein lies the reason for the national importance of this Writ of Certiorari.

3) Whether the Italian Presidential pardon/expungment of Michael Hurley's 4 decade old drug conviction in Italy, bars use of that conviction as the means of the removal of Michael Hurley, expunges the record, and wipes out the conviction, so that there is no conviction for which Hurley would have had to answer, "Yes" to a question about his having a conviction, and whether denial of that would be tantamount to denial of equal protection under the law, which is the constitutional rights of his wife, Jo Anna Hurley, citizen.

4) Whether the Hurley's admission to a conviction of possession of 69 grams of hashish (about 2 ounces) to an American Embassy in Munich in 1972 cannot be used as the sole record for his removal not only because that conviction was expunged and pardoned, but also because that admission was not obtained according to the rules set forth by the BIA, but was obtained improperly.

5) Whether the Visa Waiver on which Hurley entered the United States on April 26, 2003 cannot be the means to prevent him from receiving due process, because he attempted to use his B-1, B-2 Visa and was not allowed to do so by the official at the pre-flight inspection station.

6) Whether Michael Hurley is a rehabilitated person, who has established good moral character due to being given voluntary departure in June, 2004 by ICE, and because it has been almost 40 years since his conviction and he has no others.

7) Whether the deportation of Michael Hurley has caused irreparable harm to Jo Anna Hurley, through the dire consequences which occurred because of the loss of him.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Fifth Circuit. The petitioners here and appellants below are:

Plaintiffs-Appellants

Michael Anthony Hurley and
Jo Anna Piccione Hurley
Proceeding *pro se*

Defendants-Appellees

United States Bureau Of Immigration and Customs Enforcement, of the US Department of Homeland Security

Bureau of Citizenship and Immigration Services, of the US Department of Homeland Security

Solicitor General of the United States
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Attorneys:

Presently there are no attorneys on this case,

but in April, 2007 the defendant was

represented by:

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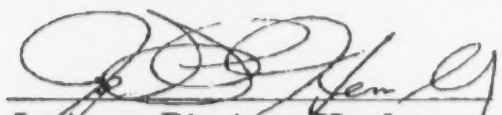

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Former U.S.C.A. 1254 (a)(1); (e) – Voluntary Departure

8 U.S.C. 1101(f) Good Moral Character

8 U.S.C. 1252(f)(2) Injunctive Relief

8 U.S.C. 1254(a)(1) testimony

28 U.S.C.1254(1) Certiorari

28 U.S.C. 1331 – Federal Question

28 U.S.C. 2403(a)

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217 Visa Waiver Program

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242(d)(1)&(2)Judicial Review Final Orders

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Louisiana Civil Code Article 98 titled "Mutual Duties of Married Persons

Senate Bill No. *S.3433.* 109th Congress on Behalf of Michael A. Hurley

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JURISDICTION

On May 11, 2004 A Notice of Denial of Application to Register Residence or Adjust Status was entered against Michael Anthony Hurley, Visa No. A95 609 022 (Appendix E)

On May 17, 2004 a Notice of Intent to Deport...was entered against Michael Hurley, (Appendix F)

On May 17, 2004 an Order of Removal Section 217 was entered against Michael Hurley, (Appendix G)

On May 17, 2004 a Stay was GRANTED to Michael Hurley to prepare for "voluntary departure" set for June 21, 2004

On June 22, 2004 a Stay of Deportation or Removal was GRANTED until January 21, 2005 (Appendix H)

On January 13, 2005 a Stay of Deportation was GRANTED through deliberation of the certified private Senate bill on behalf of Michael Hurley to be introduced by Senator Mary Landrieu. (Appendix H).

On May 15, 2006 an order of removal for Michael Hurley was set for June 14, 2006

On June 6, 2006 private bill S.3433 on behalf of Michael Hurley was introduced by Senator Mary Landrieu.

On June 16, 2006 an order of removal for Michael Hurley was set for July 6, 2006.

On July 5, 2006 a request for a report from ICE was entered by the Senate Subcommittee on Immigration.

On about July 6, 2007 a Stay of Removal was GRANTED Michael Hurley for the duration of Bill S.3433.

On September 28, 2006 a memorandum of Information (the report) concerning Michael Hurley was delivered to Senator John Cornyn.

The judgment of the U.S. District Court for the Western District of Louisiana DENYING for lack of jurisdiction of the plaintiff's Original Motion for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Other Relief was entered on April 4, 2007. (Appendix B)

A request for Stay of Deportation was delivered to USCIS – New Orleans District on April 4, 2007. DENIED.

A notice of Appeal was timely filed April 5, 2007 in the U.S. Court of Appeals 5th Circuit which requested Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Other Relief and Petition for Review.

On April 10, 2007 the motion to stay the deportation of Michael A. Hurley pending disposition of the appeal was DENIED by the 5th Circuit. (Appendix D)

After receiving extensions of time, the Brief of Appellants was timely filed on Sept. 27, 2007 with the 5th Circuit.

An order that DISMISSED Case No. 07-30314 for lack of jurisdiction was entered on December 6, 2007 by the 5th Circuit – Judges Wiener, Garza and Benavides. (Appendix A)

A Petition for Panel rehearing was timely filed on January 20, 2008.

An order that DENIED Petition for Panel Rehearing in Case No. 07-30314 was entered on Feb 13, 2008 by the U.S. Court of Appeals 5th Circuit. (Appendix C)

Jurisdiction is found under:

28 U.S.C. 1254(1) Certiorari (Appendix K)

8 U.S.C.1252(f) Injunctive Relief,

INA 242(d)(1)&(2) Judicial Review of Final Orders of Removal (See Statutory Provisions)

Jurisdiction found under 28 U.S.C. 2403(a):

(Appendix L)

Pursuant to the duties imposed upon it by virtue of 28 U.S.C. 2403(a), this Court will please certify to the Office of the Attorney General that the constitutionality of an Act of Congress affecting the public interest is herein drawn in question.

Likewise, this Court will please certify intervention for presentation of all evidence admissible in the above entitled case, and for argument(s) on the question of the constitutionality of the Immigration and Nationality Act of 1996, hereafter the Act of 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,

hereafter, IIRIRA, and 8 U.S.C. 1252.

(Appendix P).

Finally, jurisdiction is found under the powers of Constitutional Interpretation of the Supreme Court of the United States of America.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 9 of the Constitution of the United States: "No Bill of Attainder or expost facto law shall be passed."

Article 1, Section 10 of the Constitution

"No State shall...pass any...Law impairing the Obligation of Contracts"

Amendments to the Constitution:

Amendment 1: "to petition the Government for a redress of grievances."

Amendment 4: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

Amendment 5: "No person shall be ...compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.."

Amendment 14: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" and the Equal Protection Clause.

8 U.S.C. 1252(f)(1)&(2)

(f) Limit on injunctive relief

(1) In general

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction...to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the...[IIRIRA]...of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

(2) Particular cases

Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

INA 242(d)(1)&(2)

(d) Review of Final Orders – A court may review a final order of removal only if–

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents

grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

Title II, Section 212(a)(2)(A)(i)(II) Grounds of Inadmissablility – Controlled Substances.

(Appendix M)

Title II, Section 212(a)(6)(C)(i)

Misrepresentation (Appendix E, p.2)

Title II, Section 217 – Visa Waiver

(Appendix O)

Title II, Section 237(a)(1)(B) Classes of Deportable Aliens – Inadmissability.

(Appendix N)

8 U.S.C. 1101(f) Good Moral Character

STATEMENT OF THE CASE

Jurisdiction in the court of first instance, the U.S. District Court, Western District of Louisiana, Lafayette-Opelousas was filed under prelimary injunction, pursuant to Rule 65, Fed. R. Civ. P., and 28 U.S.C. 1331.

On January 31, 2003, Michael Anthony Hurley, an English subject, married Jo Anna Piccione, a U.S. citizen, in Lafayette, Louisiana, while visiting on a Visa Waiver. The Hurleys, after traveling to and returning from Europe on April 26, 2003, investigated how Michael could legally immigrate to America.

On July 24, 2006, Michael Hurley's I-485 package to apply for permanent residence at

the New Orleans INS was accepted, $1,650.00 was paid, and he received the file/visa number A95609022, while he was still legally in the U.S. **His Visa Waiver had not expired.** Michael and Jo Anna were very careful to make sure that this was done BEFORE any chance that his visa would expire, so that they would be in obedience to the law.

About May 14, 2004 they returned to the INS regarding his work permit, but Michael was arrested and presented with his own admission that he signed in 1972 at the Munich U.S. Embassy, saying, "I was imprisoned in Italy from 22nd August 1968 to 30 May 1970 for possession of 69 grams of

hashish." (See Notice of Denial...to...Adjust Status, p.2) **(Appendix E).**

Pursuant to INA 212(a)(2)(A)(i)(II) and 237(a)(1)(B) Michael Hurley was deemed inadmissible. (See "Order of Removal, Section 217"/ **Appendix G**, and "Notice of Intent to Deport..." / **Appendix F**). He was also ordered to be deported for violating his admission terms under Section 217 Visa Waiver – this despite the fact that he had been given visa A95 609 022, while still legally in U.S.

ICE officials told Michael that due to entering the U.S. on a Visa Waiver, he had no rights to judicial review. Despite that Michael was released the same day, received a one

month stay from ICE and a *voluntary departure* date was set for June 21, 2004.

Within a few days the Hurleys contacted two of the best immigration lawyers in New Orleans. Both advised the Hurleys to seek a private bill from a Senator or seek a Presidential Pardon. Both were reluctant to take on the Hurleys case and one flatly refused, emphasizing that he would be "taking their money for nothing", because the Immigration laws of 1996 were so "harsh", that it was impossible for Michael to get relief other than seeking a pardon. Neither mentioned the 30-day rule. Later, talks with Senator Hatch's office and with the New Orleans ICE office also did not inform the

Hurleys of the 30 day window to file a petition for review. And yet, everyone the Hurleys spoke with were made aware of Michael's Presidential pardon of Italy and his expungement. (*Socop-Gonzales v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2000): Timeliness rule waived because of misinformation). (And, *Nagahi v. United States*, 219 F.3d 1166, (10th Cir.1986) generally)

It was the pardon with its expungement (**Appendices I & J**) that caused the Hurleys to believe that he did not have to answer "yes" to questions about any former convictions. They believed that a pardon completely wipes out a conviction for all purposes, and that while an expungement removes a citation from a

record, a pardon indicates the crime has been pardoned or forgiven as though it is no more and never was. (Ex Parte Garland, 71 U.S. 333, 381 (1866)

As Michael Hurley prepared to voluntarily depart on June 21, 2004, they received a call from Senator Orrin Hatch's office saying they had obtained a stay but it wasn't official until New Orleans ICE was contacted. Since it wasn't yet official, the Hurleys made the decision to go to the airport. Thirty minutes before boarding the plane at Lafayette Regional Airport, Michael received a cell phone call saying a 7 month stay of deportation through Hatch's Washington office was communicated to the Field Office

Director in New Orleans, Craig Robinson, and was official.

Within the period of the 7 month stay on about January 24, 2005, Senator Mary Landrieu filed a private bill for Hurley and in a letter addressed to Landrieu, dated Jan. 13, 2005, Director Robinson at ICE granted a stay for the "duration of the bill." (Appendix H) (Record p.18/Exhibit 6B).

Unable to find the private bill in May, 2006, ICE sent Michael an order of removal. It was stayed for one day, due to Senator Landrieu filing a new private bill for Michael in June, 2006, bill no. S.3433, (Addendum p.19). A new order was sent to Michael with a removal date for July 6, 2006, because they

had not received notice from the Senate Subcommittee on Immigration to begin an investigation. Michael was timely taken to Oakdale Detention Center by Jo Anna on July 5th, and about 19 hours before Michael would have been put on a plane for removal, he was stayed again due to the investigation being requested by the Subcommittee.

In August, 2006 the investigation was completed and found "no negative evidence" about Hurley, but there was a serious error in the investigation document, which set an incorrect date for when Jo Anna Hurley filed a fiancé petition (which was actually filed with the I–485 package on July 24, 2003.) This error implied that Jo Anna had requested a

stay on April 25, 2003 (when she was in Europe with her husband) and that Michael's status at that time was illegal. *This error could have effected the Senate's later decision not to pass Michael's private bill.* (Record p.14/Ex.5A)

He was not illegal. **Michael was never without a Visa or an officially granted stay of deportation during the 4 years he resided in Louisiana, *which were all administrative remedies*, up until the last two weeks before his removal. (Appendix H)** (Record pp. 17,18,19/Exhibits 6A,6B,6C) *The Hurley's complied with the law completely during Michael's years in Louisiana.*

Neither Hurley's nor any other private immigration bill in the 109th session of Congress passed, so in 2007 Jo Anna sought a new bill which came too late. An order of removal was received by Michael on March 23, 2007. Michael reported to Oakdale ICE headquarters on April 6th at about 1:00 pm., the hour they requested due to Jo Anna's disability. He remained there in detention for 11 days until he was deported to London, England on April 16, 2007. A private bill for Hurley, S.983, was introduced into the Senate by Sen. Landrieu a few days before Hurley was deported.

On April 3, 2007 Jo Anna filed an Injunction on behalf of Michael, in the U.S.

District Court. It was dismissed for jurisdiction April 4th. (**Appendix B**). April 4th, Jo Anna filed a request for stay of deportation with USCIS. April 5th, Jo Anna appealed with an Injunction and Petition for Review in the 5th Circuit Court of Appeals.

On April 10, 2007 the motion to stay the deportation of Hurley pending disposition of the appeal was DENIED by the 5th Circuit. (**Appendix D**)

After receiving extensions of time, the Brief of Appellants was filed timely on September 27, 2007 with the 5th Circuit.

An order that DISMISSED Case No. 07-30314 for lack of jurisdiction albeit was sympathetic to the Hurley's plight was

entered on December 6, 2007 by the 5th Circuit. (Appendix A)

An order that DENIED a Petition for Rehearing was entered on Feb 13, 2008 by the 5th Circuit. (Appendix C) A request for extension of time to file the Writ of Certiorari was DENIED on April 30, 2008.

REASONS FOR GRANTING THE PETITION

Petitioners plead with the court to consider the significance of the Hurley's petition as it pertains to the many immigration cases in which there are family units with deportable immigrants whose members are Citizens of the United States of America. The Constitutional rights of these citizens must be protected at the same time that the nation

protects itself from undesirable persons entering our shores.

Since the Immigration and Nationality Act of 1996, the Congress has tightened the noose on relief for immigrants found to be inadmissible or deportable. The scant relief in the law for part–immigrant families with U.S. citizen members separated by deportation has caused many members of Congress to revisit the quickly passed Immigration and Nationality Act of 1996, passed on the anniversary of the Oklahoma City bombing and the quickly passed IIRIRA, passed in an election year.

The House introduced the following bills in hopes of creating more fairness: The "Fix 96"

bill in July, 2000, and H.R.213 in Jan., 2007, neither of which passed. The Senate introduced but did not pass S.173 in January, 1999, S.871 in April, 1999 and S.3120 in September, 2000. Only H.R.5062 passed, and it passed unanimously. It was a bill which offered amendments that limited the retroactivity of the new aggravated felony definition to crimes committed before 1996, and gave immigrants with pre-1996 convictions relief through cancellation of removal. In a press statement from Congressman Bob Filner, September 28, 2000 he noted that he honored his colleagues for restoring fairness to part-immigrant/ part-American families broken by the harsh 1996

immigration law. Though it seemed the Senate would surely pass it, intense debate over visas and election year jitters prevented its passage. (See Wolchock, C.L., "Legislative Efforts to Restore Immigrant Rights," *Human Rights Magazine*, American Bar Association, Winter 2001).

A political body as the Congress does not always render decisions that are free from the influence of a sometimes biased prevailing majority of its citizens even when those decisions create oppression for a disliked minority. What they have not been as yet able to fix may need to be corrected by the Courts, which have the power of judicial review to enforce the Constitution's guarantees and to

preserve the freedoms of American citizens in family units with immigrants. Chief Justice Warren in delivering the opinion of the court in *U.S. v. Brown,* 381 U.S. 437 (1965) quoted Alexander Hamilton, who said:

> "If the legislature...may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense."

The constitutional rights of every American citizen hang in the balance today, because no one is immune from the chance that they will one day have an immigrant family member deported without Due Process for the smallest reasons. Due to the harshness of current

immigration law, there will be a substantial number of American citizens, who will be effectively deported with their immigrant spouses, parents or children without Due Process and no Redress. There is currently a national immigration crisis and a desperate need for relief for the families of immigrants.

In examining **Question (1)** we refer to the opinion by Justice Kennedy in *Kenyeres v. Ashcroft,* 538 U.S. 1301(2003), wherein he noted that the question of holding a strict or more lenient standard to 8 U.S.C.1252(f)(2), **"has divided the Courts of Appeals."** He quotes *Andreiu, v. Ashcroft,* 253 F. 3d 477 (CA9 2001) (en banc) at 483: "("[P]etitioner must show 'either (1) a probability of success on the

merits and the possibility of irreparable injury, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the petitioner's favor'" (quoting *Abassi v. INS,* 143 F. 3d 513, 514 (CA9 1998))," and *Bejjani v. INS,* 271 F. 3d 670 (CA6/2001) which required:

> "(a showing of '(1) a likelihood of success on the merits; (2) that irreparable harm would occur if a stay is not granted (3) that the potential harm to the movant outweighs the harm to the opposing party if a stay is not granted; and (4) that the granting of the stay would serve the public interest.' (quoting *Sofinet v INS,* 188 F. 3d 703, 706 (CA7 1999))),"

He noted that: "A standard that is excessively stringent may impede access to the courts in meritorious cases," but also credited 1252(f)(2) as Congress's effort to relieve the courts from

consideration of meritless petitions. And he said, "Given the significant nature of the issue and the acknowledged disagreement among the lower courts, the Court...should examine and resolve the question in an appropriate case. This, however, is not an appropriate case."

The petitioners hope the Court will find that the Hurley's case is an appropriate case. Unlike the former case, the Hurley's case is sufficiently meritorious to be considered, because the petitioners will show that the deportation of Michael Hurley is prohibited as a matter of law, and because no court has yet heard their case.

Untimeliness of the Petition for Review

Petitioners contend that the 5th Circuit erred in dismissing their appeal due to the petition for review being untimely for these reasons:

The Hurleys maintain that the 30-day requirement for filing a petition for review is arbitrary and unconstitutional, because it denies the immigrant the opportunity for due process by making the window of opportunity to file so short that it is effectively no window at all, and because it carries with it the expectation that immigrants have a working knowledge of aspects of immigration law that are usually known only to attorneys. Given that in the days immediately following

Michael's original order of deportation, the Hurleys sought the help of immigration attorneys, but found none who would take on their case, due to the "harshness" of the 1996 laws, the Hurleys were unable to discover this 30 day requirement. Surely, this cannot mean that because they missed this unreasonably short 30 day window, they can never receive judicial review and that Michael's deportation and 10–year bar will be their permanent condition?

In our brief we cited *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (May 31, 1977). (Addendum, p.12) In Justice Powell's opinion he states:

> "The full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees... provided in the Constitution. This 'liberty' is not a series of isolated points...the freedom of speech, press, and religion;...and so on. It is a rational continuum which...includes a freedom from all substantial arbitrary impositions and purposeless restraints,..."

Can the Court consider these rigid restrictions to due process to be anything less than an "arbitrary imposition and purposeless restraint"? We cannot.

On page 11 of the Hurley's brief they point out that the 30 day requirement for filing a petition for review according to INA 242(b)(1) is (under the facts of this case) in conflict with the requirement that all administrative remedies have been exhausted – INA

242(d)(1). Even if the Hurley's had filed within 30 days, they would not have met the second requirement because all administrative remedies had not yet been exhausted, since they had a stay of deportation granted by ICE, which is an administrative remedy, and before that had expired, they received a 7 month stay through Senator Hatch, also granted by ICE. Thus, they could not have fulfilled the first and second requirements in 242 (b)(1) and 242(d)(1), respectively. When a law makes it nigh unto impossible to receive due process, that law is a Bill of Attainder and is unconstitutional, because due process is a guarantee in the Bill of Rights.

The consideration of Question (2) is also the primary consideration why the Hurley's case is an important case to review due to its influence on the national immigration crisis today. There is one primary reason why part – immigrant/part–American families are being separated through deportation for the smallest reasons, which can include a youthful shoplifting conviction 20 years ago by an otherwise law–abiding immigrant. *The primary reason for the separation of these families through deportation is that the Constitutional rights of the U.S. citizens in these families do not outweigh in any stretch of the imagination the immigrant's lack of*

rights as currently found in the Act of 1996, IIRIRA, and 8 U.S.C. 1252.

Thus, one of the most pressing Constitutional questions is: Does current immigration law *violate* Artcle 1, Section 10, Clause 1 – the "Obligation of Contracts" clause – of the Constitution of the United States of America by impairing the ability of the Hurleys to fulfill the obligations of their marriage contract, while at the same time maintaining Jo Anna Hurley's natural right to keep her liberty to live in her own native land, which right is protected by the Due Process Clause in the 5th and 14th Amendments to the Constitution. These Amendments *require* that Jo Anna cannot loose her liberty to live in

her native land *except by Due Process.* Jo Anna Piccione Hurley, a natural–born citizen of the United States clearly has every right to live on this land – her home. The 5th Amendment states: "No person shall...be deprived of life, liberty, or property, without due process of law..."

Thus, the Constitutional question arises that, if the law that deported Michael Hurley does not allow him to receive Due Process, and it *either* impairs the fulfillment of the obligations of the Hurleys' contract of marriage (against Constitution Article I, Section 10, Clause 1), *or* it forces Jo Anna to live outside her native land, in order to fulfill her obligations to her husband, thus loosing

her liberty without even a peep in a court of law (against the Due Process clause of the Constitution), *then* that law is unconstitutional and void, because it does not have greater weight than the Constitution of the United States upon which all our laws stand.

Chief Justice John Marshall writing the majority opinion in *Marbury v Madison,* 5 U.S. 137 (1803) wrote:

> "...The theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void...It is emphatically the province and duty of the judicial department to say what the law is."

The 4th amendment states that: "The right of the people to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." Yet, Jo Anna Hurley's husband, who belongs to her by contract of marriage – incredibly more precious to her than her "house, papers or effects" – was seized and removed from her without Warrant nor any opportunity to refute the charges against him in a court of law. Supreme Court Justice Louis Brandeis wrote, "The makers of our Constitution ...conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men." Napolitano, A.P., *The Constitution in Exile*, c2006, Thomas Nelson Inc, Nashville, Tenn., p. 236)

The Supreme Court's decision that the Constitution protects against arbitrary interference between the state and the integrity of family life in *Moore v. City of East Cleveland,* Ohio supports the Hurleys position:

> " '*This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.*' A host of cases, tracing their lineage to Meyer v. Nebraska, 262 U.S. 390(1923), and Pierce v. Society of Sisters, 268 U.S. 510(1925), have consistently acknowledged a 'private realm of family life which the state cannot enter'..."
>
> "Appropriate limits on substantive due process come not from drawing *arbitrary lines* but rather from careful 'respect for the teachings of history [and] solid recognition of the basic values that underlie our society.' *Our decisions establish that the Constitution protects the sanctity of the family precisely*

> *because the institution of the family is deeply rooted in this Nation's history and tradition.* It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." [Italics mine]
> See *Id*, 431 U.S. 494 (May 31, 1977).

Jo Anna Hurley maintains without equivocation that her Constitutional Rights cannot be protected if her immediate family – she and her immigrant husband – are not both *equally* protected by the Constitution and by statutes of law that *respect* the fundamental rights of all Americans and their immediate family immigrant relatives. The immigration statutes which deny Michael Hurley due process, by arbitrarily restricting jurisdiction, such as the 30 day timeliness rule, and which make no exception for

immigrants who are in immediate family relationships with American citizens, also deny due process to Jo Anna Hurley, a native–born American citizen, because of the familial obligations of her contract of marriage with Michael. Therefore, those parts of the immigration laws which grossly restrict due process and jurisdiction and have the effect of denying her these rights should be void and of no effect, because Jo Anna had a right to due process before her husband was seized, detained, deported and barred from her native soil – even her own home and private land. What a HUGE intrusion of government into the lives and liberty of private citizens!

Further, the 5th Circuit Court of Appeals has the power and jurisdiction to grant a Petition for Review of Michael Hurley's immigration case, because his immigration case has a direct and powerful effect on Jo Anna Hurley's liberty, which liberty is protected by Due Process. The 5th Amendment provides that *anything*, including a family member's immigration case and deportation, that can deny liberty to an American citizen by its effect on the family, is reviewable by the courts of this land.

The 14th Amendment provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," *but 8 U.S.C.*

1252(f)(1) abridges the Constitutional immunities belonging to Jo Anna, because it precludes her from finding jurisdiction as a party in an action to enjoin her husbands removal other than in the Supreme Court! 8 U.S.C. 1252(f)(1) cannot bar jurisdiction for the 5th Circuit, because the 5th and 14th Amendments have precedent. Their jurisdiction is found in the U.S. Constitution.

Jo Anna is bound in a contract of marriage, which she cannot break without grave spiritual, physical, emotional and *legal* consequences. Article I, Section 10, Clause 1 of the Constitution of the United States says, "No State shall ..... pass any....Law impairing the Obligation of Contracts..."

In the State of Louisiana, where Michael and Jo Anna were married, the law makes clear the obligations husbands and wives have to one another in a contract of marriage. In Louisiana Civil Code Article 98 titled "Mutual Duties of Married Persons" it states: "Married persons owe each other fidelity, support and assistance." Based on the original Louisiana Civil Code of 1870, the revision comments from 1987, paragraphs C and E state that:

> "the jurisprudence...has held that the spouses' duty to support each other is limited to furnishing the necessities of life. (*Smith v. Smith* 382 So. 2d 972 (La. App. 1st Cir. 1980)....The duty to render assistance, insofar as it is separate from that of support, includes the personal care to be given an ill or infirm spouse. (*James v. State* 154 So. 2d 497 (La. App. 4th Cir. 1963)....

> Paragrah (E) The spouses duties under this article, as a general rule, are *matters of public order from which they may not derogate by contract.* (*Favrot v. Barnes* 332 So. 2d 873 (La. App. 4th Cir. 1976)." [Italics mine]

Thus, Louisiana law clearly recognizes marriage as a contract. And as a contract, it carries certain obligations. These obligations are not mere whims, but are matters of public order and public policy of the State of Louisiana. It is clear the Hurleys cannot perform their marital duties and fulfill the legal obligations of their contract of marriage without living together. Also, though a spouse's duty (Michael's duty in this case) is to "furnish the necessities of life" and to give personal care to an "ill or infirm spouse" (Jo

Anna) and this is a "matter of public order," Michael is barred from obeying this law because of his deportation, and was barred prior to that, when he was not allowed to have a work permit from USCIS even though he received 4 stays and lived in Louisiana with his wife for 4 years. By Michael's obedience to immigration law (which prevented him from getting a job), he was forced to become delinquent in fulfilling the expectations of Louisiana law regarding his marriage contract with Jo Anna, because he was never able to earn a profit at her failing business, until 4 months before his deportation, And this was their only legal option. *Though in 4 years Michael never attempted to get a job, the only*

American's job that he would have been replacing was the job that his disabled wife, Jo Anna, had not been able to do for herself for years.

Presently, the Hurley's cannot fulfill their marital obligations because Jo Anna remains at home to divest herself of their business holdings and appeal to the courts.

In *Bridges v. Wixon*, 326 U.S. 135 (1945), the constitutionality of Section 23 of the Alien Registration Act of 1940 was reviewed by the Supreme Court. Justice Murphy in his concurring opinion wrote that the statute was unconstitutional and based on an assumption "that is obnoxious and intolerable when

viewed in light of the supernal heritage and ideals of this nation." He wrote:

> "This assumption underlying the statute is that the 'plenary' power of Congress to deport resident aliens is unaffected by the guarantee of substantive freedoms contained in the Bill of Rights...From this premise it follows that Congress may constitutionally deport aliens for whatever reasons it may choose, limited only by the due process requirement of a fair hearing...I am unable to believe that the Constitution sanctions that assumption or the consequences that logically and inevitably flow from its application."

Michael Hurley was deported without even a fair hearing in an immigration court, and for a reason that has absolutely no bearing on the moral upstanding man that Michael is today. *Bridges* supports the Hurley's request for due process from the 5th Circuit.

Our brief referred to *U.S. v Gutierrez,* 983 F. Supp. 905, 913 (N.D. Cal. 1988), wherein the court's opinion was that "aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country..." Michael Hurley has received no such constitutional protection though he married an American citizen, became a loved member of her family, managed his wife's business and established good relationships. Does this not cause the Court to question the constitutionality of the laws that deny him due process or jurisdiction in any court except the Supreme Court? (See citation for 8 U.S.C. 1252(f)(1) (Injunctive Relief).

Justice Murphy in *Bridges* went on to say: "[T]he very provisions of the Constitution negative the proposition that Congress, in the exercise of a 'plenary' power, may override the rights of those who are numbered among the beneficiaries of the Bill of Rights."

Is there anything about INA 242 – Judicial Review – or 8 U.S.C. 1252 that remotely resembles Justice Murphy's emphasis on the constitutional rights of aliens to receive due process? Finally, Justice Murphy states:

> "The deportation statute is further invalid under the 'clear and present danger' test enunciated in *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247, 249...Deportation, with all its grave consequences, should not be sanctioned on...weak and unconvincing proof of a real and imminent threat to our national security."

Is there any reason to believe that Michael Hurley – who is employed as a Security Guard for Heathrow Airport in London, and has been given counter–terrorism clearance in Great Britain (the highest form of clearance) after an exhaustive investigation on his life by Scotland Yard – is a 'clear and present danger' to the United States? This is one of the measures of the constitutionality of the above statute in question in Bridges.

Napolitano writes, "The Constitution was intended to protect individuals and minorities from the tyranny of a more numerous and powerful majority." (supra, p. 95) The protection of the majority from possible or

irrationally feared criminal activities of immigrants with age-old drug convictions, does not give Congress the right to deny part-American/part-immigrant families their Due Process rights as provided for our protection in our Bill of Rights from the very tyranny and oppression that the majority would inflict on us, their fellow Americans, in their zeal to protect themselves at all costs. The cost in this case is Jo Anna and Michael Hurley's freedom, and the freedom of every American family with an immigrant family member.

James Madison wrote in a letter to Thomas Jefferson dated, Oct. 17, 1788:

> "Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended...from acts in which the Government is the mere instrument of the major number of the Constituents"

(See Hunt, G., ed, The Writings of James Madison, pp. 269-75, 1904, "Madison-Jefferson Correspondence On a Bill of Rights, Letter from James Madison to Thomas Jefferson (October 17, 1788)", 15 July 2004, http://1stam.umn.edu/main/historic/Jefferson%20Madison%20correspondence.htm)

Thomas Jefferson wrote in a letter to James Madison: "The tyranny of the legislatures is the most formidable dread at present, and will be for long years. [But]...The

declaration of rights will be the text whereby they will try all the acts of the federal government." (See Boyd, J., ed., The Papers of Thomas Jefferson, pp. 659-61, 1958. "Letter from Thomas Jefferson to James Madison (March 15, 1789)", Madison-Jefferson Correspondence On a Bill of Rights, 15 July 2004, http://1stam.umn.edu/main/historic/Jefferson %20 Madison%20 correspondence.htm)

These great men speak of "oppression" and "tyranny." Not of Kings, but of the U.S. Legislature, a political body prone to follow the dictates of the majority; prone to the desire for continued power through re–election. They also speak of the way, the

Framers provided, whereby any oppressive laws of the Legislature can be overturned: the Bill of Rights and the checks and balances of the Federal Courts.

Question (3) states: Whether the Italian Presidential pardon/expungement of Michael Hurley's 4 decade old drug conviction in Italy, bars use of that conviction as the means of the removal of Michael Hurley, expunges the record, and wipes out the conviction, so that there is no conviction for which Hurley would have had to answer, "Yes" to a question about his having a conviction, and whether denial of that would be tantamount to denial of equal protection under the law, which is the

constitutional right of his wife, Jo Anna Hurley, citizen. **(For Pardon see Appendix I)**

Regarding the first part of this question, the Ninth Circuit found in *Lujan-Armendariz v. INS,* 222 F.3d 728,732 (9th Cir.2000) that an expungement of a first-time drug offense under the Federal First Offender Act (FFOA) bars the effects of the conviction for the purposes of deportation.

Lujan states:

> "We do retain jurisdiction, however, to determine whether or not petitions challenging deportation orders are subject to the jurisdictional bar. Put another way, when an alien petitions for review of a removal order, we retain jurisdiction to determine whether we have jurisdiction to consider the petition....we hold that we do have jurisdiction to entertain the petitions because, as we explain below, neither

> petitioner stands 'convicted' for purposes of the immigration laws. Thus, neither petitioner falls within the class of persons whose challenges to removal we are precluded from reviewing."

Thus the standard of *Lujan-Armendariz* could have provided the 5th Circuit with jurisdiction to review the Hurley's petition, since Michael's conviction was a first–time offense, which was pardoned and expunged by the President of Italy. *Thus, his conviction is eliminated as the means of preventing judicial review.*

In *EX PARTE GARLAND*, 71 U.S. 333, 381(1866) speaking of the far-reaching effects of a Presidential pardon, the majority opinion ruled:

> "The Constitution provides that the President 'shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment'...This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders....the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence."

Though Hurley did not have the benefit of a U.S. Presidential pardon, because his crime for which he was deported was, for all the better we pray, not committed here, but in Italy, nearly 40 years ago, then if the court can extend Jo Anna's right to Equal Protection

to her husband (with whom she is contractually bound), then by law, Michael can be found by his Italian Presidential pardon/expungement to be free of the effects of his conviction for any purposes including immigration. And, through Equal Protection his pardoned conviction cannot bar him from the right to answer "No" to any questions regarding it, since it is – *as if he had never committed the offense.* (Pardon – Certificate of Expiation, **Appendix I**; Italian Penal Code – Art. 151 – Amnesty, **Appendix I 2**; and the Certification of the translation, **Appendix I 3**; See the law upon which the pardon was based, D.P.R.N. 283, **Appendix J**; and the Certification of the translation, **Appendix J 2**

Finally, Equal Protection demands that if the Italian Conviction is sufficient to exclude Hurley, then the Italian Pardon is equally suffcient to bar his exclusion.

Question (4) refers to the requirements set forth by the BIA for the proper manner in which to obtain an admission, which then can be used for the purposes of deportation. The Board of Immigration in 1945 required that "four factors be present to exclude an applicant for entry for making an admission" (*Matter of J*, 2 I&N 285, 287 (BIA-1957). The second factor provides that an admission of a violation of a criminal statute that is "broad or contains a number of offenses presented in the disjunctive is not necessarily

a valid admission" (*Immigration Law and Crimes*, p.3-6) (See *Matter of B.M.*, 6 I&N 806 (BIA-1955) The Italian statute violated in Hurley's admission is very broad and presented in the disjunctive with wording regarding buying, selling, using, or exporting, etc., a variety of classes of drugs by individuals or by "authorized companies" such as pharmaceutical companies. (Record p.13/Ex.4B: *LAW 22...Art.6*)(See Addendum, p.6 for full translation)

The third factor required for an admission to be valid for purposes of excludability is that "a consular....official must provide the applicant for admission with a definition of the crime before a noncitizen can make a valid

admission to a crime involving...a controlled substance offense." (*Immigration Law and Crimes*, pp. 3-6/3-7), (*Matter of K*, 9 I&N 715 (BIA 1962), and, "a noncitizen must admit voluntarily to the elements of the offense after the official explains the offense in plain terms for it to constitute a valid admission." *Matter of G.M.*, 7 I&N Dec.40 (A.G.1956)

A reading of Record p.6/Exhibit 2A reveals that Hurley testified that his admission was not obtained properly by the Consular in Munich for purposes of excludability, in that no definition/explanation was afforded him. Without the use of this admission there is no evidence of his conviction other than his expungement document – the *Certificate of*

Expiation – which is a Presidential pardon and expungement sufficient to bar the use of the admission for removal purposes anyway. Thus, this may be moot.

Question (5): Visa Waiver (Appendix O)

On April 26, 2003, when Michael and Jo Anna Hurley returned from their trip to Europe, Michael attempted to use his B-1/B-2 Visa stamped "indefinitely", but he was not allowed and was forced by officials to use his Visa Waiver to enter the U.S. (Record p.4/Ex. 1A: Copy of B-1/B-2 Visa marked "indefinitely" on the expiration date; Record p.15/Ex. 5A(2): Visa Waiver of Michael Hurley stamped APR 26, 2003; Record p.5/Ex. 1B: Sworn Statement

by Jo Anna Hurley of what transpired on April 26 to prevent the use of B-1/B-2 Visa).

A thorough reading of Exhibit 1B, which relates how officials prevented Michael Hurley from using his B-1/B-2 Visa to enter the U.S. makes it clear that Hurley did not waive his right to due process "voluntarily," but that he was forced by officials to use the Visa Waiver that later deprived him of his right to due process as a legal immigrant, when he faced removal. Constitutional law requires that constitutional rights cannot be forcibly waived.

It is INA 217 that created this situation for the Hurleys. It states that there is an agreement between the United States and

"carriers" to accept aliens (preferentially) on the Visa Waiver, so that should there be a need to remove the alien, the carrier is responsible to pay for the removal flight.

When officials at the preflight inspection station (authorized by the Visa Waiver Program) refused to accept Michael Hurley's B-1/B-2 Visa, they provided a policing function for the U.S. government to ensure the use of the Visa Waiver. Thus, the government can deny the right of judicial review, and the Constitution becomes impotent in its ability to safeguard the rights of aliens or their U.S. citizen immediate family relatives. (See INA 217 Appendix O)

The fact that Michael did not voluntarily use his Visa Waiver to travel to the United States, is sufficient to stop the Visa Waiver bar to judicial review. Jo Anna Hurley challenges the Constitutionality of the Visa Waiver law by this reasoning: It provides by statute the means by which Jo Anna's husband can be *"seized"* (4th Amendment) and deported without judicial review. This is clearly against her 4th Amendment rights and Article 1, Section 9: "No *Bill of Attainder*.... shall be passed")

The Oxford English Dictionary, Vol. I, p.935, defines "Bill of Attainder" as: "One introduced or passed in the English

Parliament (first in 1459) for attainting any one *without a judicial trial*." [Italics mine]

Though an American citizen should never have to worry that she or any member of her family might be "tried" by the Legislature, this is in fact what has happened to Jo Anna.

"The Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function or more simply: *trial by legislature*." [italics mine] (See *U.S. v. Brown*, 381 U.S. 437, 440 (1965) (Addendum p.14)

If Congress in passing the Visa Waiver Program considers it not to be in violation of

the Constitution when used against an alien, because deportation is considered to be civil rather than criminal, then the words of a New York federal district court judge must be considered, wherein he wrote: "...it defies common experience to characterize deportation of an alien...as anything other than punishment for his crimes.", and whereby he argued against deportation as a strictly "civil" penalty. *(Beharry v. Reno*, 183 F.Supp. 2d 584 (E.D.N.Y. 2002).

Though the court in *Bridges v. Wixon* conceded to "technically" calling deportation non-criminal, they confirmed the need to safeguard the Bill of Rights pertaining to aliens:

> "...It is no answer that a deportation proceeding is technically Non-criminal in nature and that a deportable alien is not adjudged guilty of a 'crime.' Those are over subtle niceties that shed their significance when we are concerned with safeguarding the ideals of the Bill of Rights." (See *Bridges*, supra, p.164.)

Regarding *both* Jo Anna and Michael's rights as a family unit, the Visa Waiver statute is really a Bill of Attainder. (See INS v. Chadha, 462 U.S. 919 (1983) generally) (Addendum p.15)

Question (6) Good Moral Character

During Hurley's first one–month stay given to him by ICE, ICE instructed Michael to purchase a ticket to London. Michael did so. (The evidence of this e-ticket in Exhibit 12, was denied) The day of departure, June 21,

2004, they went to the airport knowing full well that if they would not have received a phone call from Sen. Hatch's office, telling them the stay was official, Michael would have been leaving on that plane.

The Hurleys showed throughout their ordeal their strict obedience to the law. (Record p.16/Exhibit 5B: Affidavit by Wilma Piccione attests to Michael's "voluntary departure.") All the folllowing attest this obedience and his good moral character:

1) The letter from ICE FOD Robinson to Senator Mary Landrieu, which confirms a second stay of removal made official on June 22, 2004 until January 21, 2005, (Appendix H)(Record p.18/Ex.6B), and...

2) a third stay of removal "granted through the deliberation of the private bill", and...

3) Hurley's compliance with his order of supervision.

Granting "voluntary departure" to Hurley who was being removed under INA 212(a)(2)(A)(i)(II) establishes good moral character because by statute ICE cannot grant voluntary departure under those conditions unless the conviction is more than 15 years old or has occurred before Nov. 29, 1990 and the alien shows good moral character. (*Immigration Law and Crimes*, pp. 9-5 to 9-9)

In *Matter of Carbajal,* I&N 272 (BIA-1978) the BIA reasoned: "Since a finding of good moral character is required for a grant of

voluntary departure, this record does not sustain a finding that these immigration violations rendered applicant a person of bad moral character."

Applying this reasoning to Hurley, the 4 decade old conviction in Italy cannot render Hurley a person of bad moral character, nor can Hurley's denial of having a former conviction do so. Also: "The BIA...held that a mechanism that ameliorates the consequences of a conviction for deportability eliminates the bar to good moral character." (*Immigration Law and Crimes*, p. 9-11). The invalid admission, the broad Italian statute upon which his conviction is based, and Hurley's pardon all ameliorate these consequences.

The Hurleys did all required to stay within the requirements of immigration law. Michael was never in the United States without either a legal Visa Waiver entry; the visa, A095 609 022, given to him when his I-485 package was accepted; or a stay of removal given him by ICE (altogether there were four). The only time one could establish a lack of mechanism to allow him to stay was the week, prior to the last order of removal, dated March 20, 2007, when Michael lost the 75 day protection granted by ICE to Congress for the renewal of private bills. During that week Jo Anna worked with Sen. Landrieu for another bill. That private bill is number S. 983, which should be in Congress today.

Officer Catalan's positive report and Hurley's compliance with his orders of supervision (Record pp. 14, 17–19/ Exs.5A, 6A, 6B, 6C), establish good moral character. Throughout Hurley was compliant, three times submitting himself for removal. He showed his good character in many ways, including his restraint in the way he handled himself at their business, when it was robbed and vandalized by the questionable people who shared the building they rented. He endured it all including his own financial ruin, and never gave up because of his deep love for his wife, Jo Anna and his love for Louisiana.

Question (7) can best be answered in the Petition for 60 Days Extension of Time to

Submit the Writ of Certiorari which was denied. But, briefly, after her husband's deportation, Jo Anna Hurley suffered maltreatment by persons working in her business, whom she thought she could trust, when she was embezzled from, robbed, and vandalized repeatedly in retribution, because she had reported to the police the suspected activity of one of them, of whom there was testimony that this person may have been selling marijuana. Jo Anna would not have had unsupervised help with Michael there. Due to Michael's deportation, Jo Anna is very close to being financially ruined. The stress of all of this has greatly worsened Jo Anna's health increasing the pain of her disease

exponentially and causing her to suffer pain and fatigue immeasurably as she fights her husband's immigration case and tries to divest herself of their used car business.

CONCLUSION

In Question (2) it is laid before the court many of the civil rights belonging to Jo Anna Piccione Hurley, which include unlawful seizure, the right not to be constrained to testify against oneself, the right not to be twice put in jeopardy for the same offense, the right to due process and equal protection under the law, the right not to be subject to any law that is a Bill of Attainder or an ex post facto law, and finally, the right not to have the obligations of her sacred contract of

marriage unreasonably impaired by any law written by Congress.

Now let us look at the rights given to Michael Anthony Hurley, her husband, by immigration law as it stands today. Does he have the right not to be seized and banished without first receiving due process in a court of law? No, he does not. Does he have the right to remain silent and not to testify against himself without risking being accused of misrepresentation? No, he does not. Does he have the right not to be twice put in jeopardy for the same offense for which he has already dearly paid? No, he does not. Does he have the right not to be subject to a law that is a Bill of Attainder? No, he does not. Both the

Visa Waiver law, INA 217, and INA 242, Judicial Review, are for him Bills of Attainder, which can banish him without any form of due process. Does he have the right not to be subject to a law that is an ex post facto law? No, he does not. The Retroactivity of the Act of 1996 and IIRIRA are for him ex post facto laws. Does he have the right to be as equally protected under the law as Jo Anna is? No, he does not. Finally, does he have the right not to have the obligations of his contract of marriage impaired by an unreasonable law written by Congress? No, he does not.

Petitioners have named eight Constitutional rights which Jo Anna Piccione Hurley has, and eight rights which Michael

Anthony Hurley, her husband, does not have. Eight positives and eight negatives equal ZERO. And, ZERO is the amount of Constitutional rights that the family of Michael and Jo Anna Hurley have together. ZERO is the amount of rights that the legal contractual unit of their marriage can enjoy. And therefore, ZERO is the amount of Constitutional rights that Jo Anna Piccione Hurley – a natural-born citizen of the United States of America – the land of the *Free*, has and will ever have as long as the Courts of this land uphold these unconstitutional laws that are depriving American citizens of the integrity of their family life, of their homes, lands, businesses, property, papers, and

effects, their right to work, and worst of all, of their family members, their freedom, and their beloved America. This is accomplished by the most arbitrary and unjust means depriving both immigrant and citizen of their most natural and reasonable rights which they ought to enjoy, for which our Fore-fathers sacrificed their lives, homes, and property, giving all so that we could inherit the freedom they fought so hard to provide. We ask the Court, where is that freedom now?

The Declaration of Independence:

"*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life,*

Liberty and the Pursuit of Happiness. – That to secure these rights Governments are instituted among Men, deriving their just powers from the consent of the governed....."

That the rights of the family of Michael and Jo Anna Hurley also come from their Creator, and that their rights include all of the rights found in that Inspired Document – the Constitution of the United States of America – and that through the Guidance of Divine Providence, it is the moral obligation of every official of this government to bring its laws into compliance with our Constitution and Bill of Rights, so that the families which God has formed will be as protected by Our

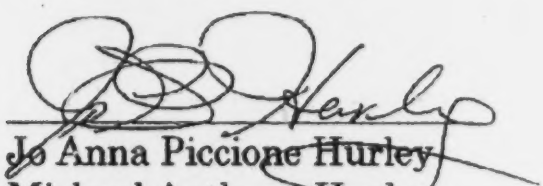
Constitution as are the lives of its individual citizens. (See ***Appendix Q)***

That when a man or woman repents of a mistake that is decades old and shows their compliance to the laws of the country in which they reside, then the National Tradition of the United States of America – which is a Christian tradition and a tradition of Freedom – must prevail through laws that include statutes of limitations, and that do not punish forever that which has been Washed by the Grace of Repentance.

In the courage of your convictions please grant this Writ of Certiorari to address these Constitutional Questions and these

differences of opinion on jurisdiction in the Circuit Courts.

Respectfully Submitted:



Jo Anna Piccione Hurley
Michael Anthony Hurley
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Proceeding *pro se*

May 12, 2008